

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on January 24, 2001 at 3:05 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 299, 1/18/2001; HB 253,
1/18/2001
Executive Action:

HEARING ON HB 299

Sponsor: REP. RON ERICKSON, HD 64, Missoula

Proponents: Kevin D. Keenan, Helena
Paul Edwards, Friends of the North Whitefish Stage
Inc.
Steve Gilbert, for Jack Lyons
Gail Coyer, for Vivian Drake
Lynda Saul, Helena
Patrick Judge, Montana Environmental Information
Center
Vonnie Gestring, for Stan Reifel

Opponents: Michael Kakuk, Montana Contractors Association
Angela Janacaro, Montana Mining Association
Don Allen, Western Environmental Trade Association
James M. Collins, Helena
Russ Ridder, Montana Resources

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.6}

REP. RON ERICKSON, HD 64, Missoula, stated, this bill has four major parts which he will address as he goes along. When the bill talks about open cut mining it is talking about gravel pits. There are over 2,000 gravel pits in the state. The Montana Constitution says that all mines shall be reclaimed. The current law on reclamation should be changed as there is some unease about mines and reclamation and who has to pay when the bonding isn't good enough. He referred to HB 69 and stated how it relates to HB 299. HB 299 will have some issues in it involving insolvency. He stated that Montana needs gravel more than ever and this legislation needs to be passed to insure the reclamation of these gravel pits. This bill makes open cut reclamation law, regarding bonding, much more like the hard rock mining act. Much of the language of this bill was taken from the hard rock mining law and from HB 69. He requested that the committee not take executive action on HB 299 until HB 69 is heard. He then went over the bill's new and struck language. He stated that he lives near a gravel pit and his constituents are concerned about the reclamation.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 11.6}

Steve Gilbert, for Jack Lyons, submitted written testimony
EXHIBIT (nah19a01) .

Paul Edwards, Friends of the North Whitefish Stage, Inc.,
submitted written testimony **EXHIBIT (nah19a02) .**

Kevin D. Keenan, Helena, submitted written testimony
EXHIBIT (nah19a03) .

Gail Coyer, for Vivian Drake, submitted written testimony
EXHIBIT (nah19a04) .

Linda Saul, Helena, stated that she and her husband reside east of Helena. A 400 acre gravel pit operation has been approved adjacent to their property. She stated that gravel pit operations are temporary but their home is not. They have to put up with the dust, noise and lights and want to be assured that the operation will be reclaimed in a thorough and timely manner. She stated that neglected gravel pit operations are a notorious source of noxious weed introduction. She wants to be assured that if the company does not complete proper reclamation the state will have sufficient bonding in place to insure the site is reclaimed. She stated that she is also concerned that an understaffed agency will be unable to provide consistent, regulatory oversight, that is why she and her husband support the mandamus provisions of the bill. She asked for a do pass of HB 299.

Patrick Judge, Montana Environmental Information Center, stated that the committee should consider this bill as an operating principle that an ounce of prevention is worth a pound of cure. He stated that, according to the Legislative Fiscal Division, Montana currently faces \$24,600,000 in unbonded reclamation costs. This significant liability has accrued with respect to metal mines. This bill will prevent further liability in that area. He passed out an article from the Missoulian that discusses gravel mining in Montana **EXHIBIT (nah19a05) .** He then stated that it is very important that the state only accept sureties that are equity convertible to cash that do not fluxuate over time. With respect to the mandamus provision, with 2,100 operations out there, there is no way the department can monitor all of them. This is an important avenue for public participation. He stated that the measures in the bill are very conservative. He urged the committee's support of the bill.

Vonnie Gestring, for Stan Reifel, submitted written testimony
EXHIBIT (nah19a06) .

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 34}

Michael Kakuk, Montana Contractors Association, submitted written testimony **EXHIBIT**(nah19a07).

Angela Janacaro, Montana Mining Association, stated, in opposition of HB 299, she would reiterate the points that **Mr. Kakuk** brought up. She also stated that the language on page 2, line 13, "any person with an interest", is not clearly defined. Any person does not have the expertise required to bond a mine. Also, sometime, somewhere, this "not in my backyard" mentality will have to end. The gravel to put in these people's basements and pave their roads probably came from the gravel pits they are complaining about.

Russ Ridder, Montana Resources, stated that he opposes HB 299 for the same reasons as **Mr. Kakuk** and **Ms. Janacaro**. He stated that there needs to be a definition for "any person with an interest". Does it just take a \$.34 stamp and letter to start an action? He spoke of MRI's plans to reclamate it's mine.

Don Allen, Western Environmental Trade Association, stated that he opposes HB 299 for the same reasons as stated by **Mr. Kakuk**, particularly the language "any persons with an interest." He also stated that there is a big problem with the numbers that were given in comparison to the other laws. All of us use these materials and to make it tougher for these types of operation to continue, for the sake of some bad experiences, is overkill. He urged a do not pass.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 48.4}

REP. CLANCY asked if there is a fiscal note on this bill. **REP. ERICKSON** answered there is no reason to have one.

REP. HURDLE asked **Mr. Kakuk** if he can see that it might be necessary, under certain circumstances, to have people with an interest able to report improper behavior by the gravel pits. She gave an example of the problems she would see if this language was not included. **Mr. Kakuk** stated the example would be an enforcement action under the mandamus section of the bill. The language that he has a problem with is on page 2, the request for bonding. This would mean that anybody that wants to contest a bond could just mail a letter requesting a bond recalculation. This would cause a nondiscretionary, contested case hearing for

an administrative hearing officer with DEQ, the operator and the affected individual. He again stated this is current language with metal mines, 74 permits, you stick this in hard rock and you have 2,100 permits that would be subject to this. He questioned the justification and need for this.

REP. LAIBLE asked **Mr. Kakuk** if the sponsor or any other proponents of this bill contacted him for input to make this a better bill. **Mr. Kakuk** stated that he and **REP. ERICKSON** did have a chance to sit down a couple of hours earlier and talk briefly. Followup - is there some way this bill can be made acceptable or is there a compromise that can be made between the concerned citizens and the gravel pits? **Mr. Kakuk** stated that he and **REP. ERICKSON** did talk about some ways to reduce some of these problems.

REP. GUTSCHE asked **Mr. Judge** if the DEQ can already do what the new language on page 1 addresses and why it needs to be in statute rather than in rule making. **Mr. Judge** stated that the department could move forward with rule making but the MEIC has questions on rather or not they would do that. MEIC thinks the department is part of the problem. He stated that the problem is two-fold, the statutes aren't quite as strong as they can be and the department has not been aggressive enough in taking enforcement actions. Followup by **REP. GUTSCHE** - please respond to the 2,100 sites potentially being contested, the great "potential for mischief", how many people he thinks would contest and regarding the statement on page 2 "any person with an interest". **Mr. Judge** stated that the provision on page 2 is regarding the establishment of what the bond is. He stated that he was not sure that the citizens of Montana would "pull out their calculator" and want to suggest an alternate figure for the bond.

REP. GUTSCHE asked **Steve Welch, DEQ**, about current enforcement by the DEQ, how many complaints is the DEQ getting, what's their enforcement policy and what is currently happening. **Mr. Welch** stated that the number of complaints regarding open cut mining operations are few, maybe 7 or 8 last year. One specific operation, Carlson Sand and Gravel, has received a number of complaints in the last couple of months. The DEQ has responded to these complaints and the department feels comfortable that the actions they have taken are appropriate. **REP. GUTSCHE** asked where Carlson Sand and Gravel is located, what the complaints were and what has been done to respond to them. **Mr. Welch** answered that the site was opened in the 1960's and it has expanded from 2 acres to 28, where it stands now. In 1998 they filed an application to move it up to 100 acres and the opposition was so large that the applicant reduced the size to 77

acres. Complaints have come in that mining has exceeded what is permitted. It has exceeded the 28 acres by 2 acres. Carlson Sand and Gravel was issued a violation letter in 1999 relative to that specific violation. They also operated an asphalt plant in 1997 that was not a permitted use and they were recently issued a violation letter on that.

{Tape : 1; Side : B; Approx. Time Counter : 0.1} The other complaints center around bringing in waste material from Whitefish and other areas. They were issued a violation letter for that issue. There has been no documentation that this waste is hazardous though a lot of it is not usable for fill. Carlson was required to separate the material and is only allowed to use clean fill. The DEQ feels comfortable that they have responded appropriately and taken appropriate actions on these complaints. He estimated that the DEQ has probably received 150 letters of complaints regarding these things and they are doing the best they can to respond to them. There are other things in the state that require attention so they can't immediately respond. Followup by **REP. GUTSCHE** - has the DEQ issued 2 letters to Carlson. **Mr. Welch** answered, they have issued 3. **REP. GUTSCHE** then asked if there were any fines levied. **Mr. Welch** answered, there were not. The DEQ has received the direction that in something that is minor they are to seek compliance with the permit. If there is something that is proposing environmental harm, is intentional and is a safety hazard, there is no hesitation to go after official enforcement that will, most likely, result in penalties. When it is an unintentional, minor infraction a violation letter is appropriate. Followup by **REP. GUTSCHE** - does the DEQ has authority to fine in this instance. **Mr. Welch** answered yes. Followup - what would the amount of the fine be? **Mr. Welch** stated, it would depend on the situation. Followup - Is Carlson Sand and Gravel bonded? **Mr. Welch** answered yes, they are over-bonded. Followup - you have had 7 or 8 complaints in the last year? **Mr. Welch** stated, yes and that is statewide. Followup - do you see a huge problem for mischief with the passage of this bill? **Mr. Welch** stated that he doesn't know but maybe.

REP. STORY asked **Mr. Judge** what he based his belief on that there would not be any great impact of people coming forth, as interested citizens, in the bonding process. **Mr. Judge** stated that he based that on the examples that have been given. He stated there are some figures in the article from the Missoulian (exhibit 5). Followup by **REP. STORY** - those had to do with complaints, what evidence do you have that once you open up the whole bonding process you will not get people, with no definition who they may be, who may file complaints and prevent others from going into business. **Mr. Judge** stated that he has no proof and it is only a speculation at this point. Followup by **REP. STORY** -

you talked about the difficulty people have working with the department, have you or the organization you represent attempted to work with the Department on these issues? **Mr. Judge** stated, historically they have spent a lot of time on these bills. **REP. STORY** stated that he is not talking historically, he is talking about this department director and this administration. **Mr. Judge** stated they have spent a significant amount of time meeting with Jan Sensibaugh and other staff regarding reclamation bonding bills coming forth for this session. Followup by **REP. STORY** - have you had positive or negative results? **Mr. Judge** stated that it has been a mixture.

REP. DALE asked **Mr. Welch** what other operations does the open cut division cover? **Mr. Welch** stated, in addition to the sand and gravel, it requires reclamation for bentonite mines, clay, peat, etc. Followup by **REP. DALE** - how many of these 2,100 sand and gravel permits are held by counties or municipalities? **Mr. Welch** stated approximately 600.

REP. LAIBLE asked **Mr. Welch**, do you feel the Department can enforce the mandamus provisions, as it may expand the amount of enforcement, with it's current staff? **Mr. Welch** stated that he believes they have been doing that enforcement all along. He is unsure if people were to challenge that enforcement how much that would be. More of a concern is that the Department would be required to be prosecuting a civil action rather than investigating other types of compliance. If the Department were forced to do that then it would add considerable time and cost.

REP. YOUNKIN asked **Mr. Judge** if there are any unbonded reclamation costs for any open cut mines in Montana. **Mr. Judge** stated that he is not sure but the thrust of his testimony was to the principle of an ounce of prevention is worth a pound of cure. It is a problem that does not necessarily exist but may come up in the future.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 13.8}

REP. ERICKSON stated that he believes that this bill can work. A savings clause could be put in this bill so that the 16 operations who have put up their land for their bonds will not be affected. He asked **Larry Mitchell** to write that as an amendment right away. He also stated that when you listen carefully to the mandamus testimony what you heard was about section 3(b) and the concerned should sit down and talk about how they can make it work. Regarding the "any person" language, he stated that he is

willing to try to make this work also. Citizens in this state ought to be able to be involved and the mandamus section is the most crucial part of the bill. He hoped for a do pass.

HEARING ON HB 253

Sponsor: REP. BOB DAVIES, HD 27, Bozeman

Proponents: Casey Emerson, Bozeman
Clinton Cain, Bozeman
Tom Keating, Billings
Anthony James Meilie, Clyde Park
Steven L. McNeill, Bozeman
Joe Beardsley, Jefferson County
Leita Beardsley, Jefferson County
Bill Nason, Kalispell
Ken Flannegan, Kalispell

Opponents: Pam Bucy, Attorney General's Office
Janet Ellis, Montana Audobon
Darrell Holzer, AFL-CIO

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 16.5}

REP. BOB DAVIES, HD 27, Bozeman, stated, HB 253 is not an effort to force the sell off of government land to private interest. It is an attempt to impose the constitutional limits on the Federal Government regarding the ownership of the land within the states. The Constitution is a contract between the central government and the states. Patrick Henry stated this is not a contract between the people and the central government, it is the states that entered into this contract. What we have here is a situation where the Federal Government has exceeded the constitutional limits imposed by the constitution. It is pointed out that the State Enabling Act also could be viewed as a contract wherein the state agreed to allow the Federal Government to administer certain lands at the time statehood was granted. However, because the constitution is quite specific and explicit on what lands the Federal Government may control, even though this did occur, that a law passed in defiance of the constitution is void, this was stated in *Marberry v. Madison*. He quoted Alexander Hamilton stating, "No legislative act contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principle, that the servant is above his master, that the representatives to the people are superior to the people themselves, that men acting by virtues of

powers may do not only what their powers do not authorize but what they forbid." He quoted Thomas Jefferson, "Our peculiar security is in the possession of a written constitution, let us not make it a blank paper by construction." He talked about the general welfare clause being sited as a constitutional authority for just about anything that the federal government wants to do. James Madison, addressed that point stating, "For what purpose could the enumeration of particular powers be inserted if these and all others were meant to be included in the preceding general power. Nothing is more natural nor common than first to use a general phrase and then to explain and qualify it by a recital of particulars but the idea of an enumeration of particulars which neither explain nor qualify the general meeting and can have no other effect than to confound and mislead you is an absurdity." He stated that the power to control arch tracts of land, in any state, is not authorized in the constitution. He called the committees attention to the fiscal note which he did not sign. The reason that he didn't sign it is that it is listing large quantities of money as an expense to the state if they were to take over the administration of the federal lands which is an absurdity. The state currently is administrating a fraction of the lands that the Federal Government controls and each year a check is written to the general fund for K-12 education in the amount of about \$40,000,000. To assume that taking over additional lands would be state liability is to say that the lands that the state currently administers are an asset but any additional lands are a liability. Finally, he stated that he would like to amend the bill to clean up the language and will provide those amendments to the committee before executive action is taken.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 25.5}

Casey Emerson, Bozeman, submitted written testimony
EXHIBIT (nah19a08) .

Clinton Cain, Bozeman, stated that he has studied the State and Federal Constitution. He sited a verse done in a resolution of congress, on public lands, October 10, 1780, "The ownership, control and administration of western lands is one of the most acute and perplexing of the problems of the old empire. By their charters many of the American colonies were entitled to the lands west of the Appellations and the Proclamation of 1763 closing these lands to settlement aroused general resentment with the outbreak of the Revolution. The states resumed their titles to the western lands as soon as we declared war on England." **Mr. Cain** stated that many of these lands were conflicting and

uncertain and there was a widespread feeling, especially in those states that did not have title to western land. He stated that Governor Marr unsuccessfully tried to pass a constitution in 1866. In 1884 a constitution passed the constitutional convention and was signed by the officers but was rejected by the Federal Government. Governor Toole tried to get the constitution ratified by congress from 1884 till 1889. The big sticker was the Enabling Act. **Mr. Cain** quoted a part the Montana Constitution regarding the Enabling Act, "The congressional act above referred to, to provide for the division of the Dakota Territory into two states and granted authority to the people of Dakota, Washington and Montana to form their own constitutions to the state governments. Four fundamental provisions of this Enabling Act should be here noted. The first of these provisions set forth a perfect toleration of religious sentiments should be secured to the inhabitants of the state." **Mr. Cain** stated that the sticker was that, "The second was the people of Montana must disclaim all rights and titles to the unappropriated lands and to all Indian lands within the boundaries of the state." He stated, when the federal congress passed this Enabling Act they went in a direct violation of the U.S. Constitution. They blackmailed the state into adopting the constitution. **Mr. Cain** stated that in the Articles of Confederation all states were to be entered into under equal footing. That was also violated by the Enabling Act. He stated that HB 253 is a good, sound, right bill.

Tom Keating, Billings, stated that when he served in the Senate he carried a resolution to this effect. That resolution was used and adopted by the state of Alaska. He stated that there is a clause in the U.S. Constitution that says no state will be erected out of any other state or a combination of states. He talked about the establishment of boundaries when the states were formed out of the territories. **Mr. Keating** stated that Public Law 52 established statehood for Montana, North Dakota and South Dakota. This law was enacted by congress and reserved some of the lands. He stated that is unconstitutional, the original states cannot own a piece of a new state. All of the land, under the Equal Footing Doctrine, of a newly erected state, should be patented to that state except for lands that were reserved for the Indian Reservations. He then stated that this proposal is very serious. There are 5,000,000 acres of state lands that are administered by the Department of State Lands which get a \$6.00 to \$1.00 return on that land. That income goes into the Education Trust Fund, the Education Budget, the Board of Investments and a piece of it goes for the administration of the Department itself. There are 30,000,000 acres of federal lands including mineral acreage. If these lands were patented to the state as they should have been, you wouldn't have to worry about the mining law of 1972. In protecting the environment, the state

lands have better natural environment than the federal lands because the state operates the land close to the land. The rules and regulations for public domain are written in Washington D.C. and they have no sense of what goes on out here with regards to the environment. **Mr. Keating** stated it is only right, under the constitution, that this state should have title to all of the land within the state.

Anthony James Meilie, Clyde Park, stated that this needs to be looked at for what it really is, a means to use our United States of America Constitution. "We can stop the tail from wagging the dog." He stated that he would, "like to be a cheerleader for all of those of you who really believe that this is a government of the people, by the people and for the people." He stated this is a wonderful opportunity for the State of Montana to create more income. He urged the committee to, "do the right thing which is help the state of Montana and help the rest of the country reclaim their constitutional rights."

Steven L. McNeill, Bozeman, stated that the constitution speaks for itself and we have the opportunity to do the constitutional thing for the people of the State of Montana. He spoke about the fires the summer 2000 and how this bill would help prevent another disaster like those fires.

Joe Beardsley, Jefferson County, stated that all government should play by the same set of rules. That set of rules is the U.S. Constitution. He suggested that Federal Government does not play by these rules. **{Tape : 2; Side : A; Approx. Time Counter : 0.1}** He stated that they play by the rules of whoever can manipulate and control the public sentiment at any given time. He stated that this bill will set us on a step towards reversing the illegality of the Federal Government owning a large amount of land in Montana. He urged a do pass of HB 253.

Leita Beardsley, Jefferson County, did not attend the hearing but did submit written testimony **EXHIBIT(nah19a09)**.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 2.2}

Pam Bucy, Attorney General's Office, stated, in recent years there has been a movement to get control of Federal Government lands in the rural west. This movement has been labeled "state supremacy" or "county supremacy movement." Those involved in these movements have actively proposed legislation or have purposely violated federal land management rules in order to create litigation. The movement has been very successful in that

area. The Ninth Circuit Court has soundly rejected the legal arguments on which this legislation is based. They did so in 1997 in a case titled *United States Of America v. Gardner* **EXHIBIT (nah19a10)**. Montana, among several other states, filed an Amicus Brief, in the case, supporting the United States position. The clear and concise arguments, made in the case by the "state supremacy", were rejected by the court. This case was appealed to the United States Supreme Court who did not accept the case. There has been no change in controlling precedence since *Gardiner* that would warrant a different result. This bill requires the Attorney General's office to engage in extremely costly litigation with virtually no chance of success. She urged a do not pass on behalf of the Attorney General and the Department of Justice.

Janet Ellis, Montana Audobon, stated that Audobon opposes this legislation for the same reasons as the Department of Justice. It would cost tens of thousands of dollars to lose a lawsuit and that doesn't make sense. She urged a do not pass.

Darrell Holzer, AFL-CIO, stated that Montana is not an island, the Federal Government needs us and we need them. We have elected representatives representing our interests in the Federal Government. This avenue has been tried and failed. He encouraged a do not pass.

Informational Testimony:

Bill Nason, Kalispell, stated this is a constitutional issue. He stated that the Attorney General, as an agent of the people, should want what is best for the public. As well should the legislators, if they uphold their oath of office. **REP. YOUNKIN** told **Mr. Nason** that she considered him as a **Proponent** to the bill. **Mr. Nason** stated that, as a proponent, he would only be a proponent to the constitutional business law contract.

Ken Flannegan, Kalispell, stated that when the Federal Government takes land they close trapping on those lands. **REP. YOUNKIN** told **Mr. Flannegan** that she considered him as a **Proponent** to the bill.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 14}

REP. LASZLOFFY asked **Mr. Emerson** if there is any federal land within the first thirteen states. **Mr. Emerson** stated he believes so but he is really not sure.

REP. HARRIS asked **REP. DAVIES**, if the Supreme Court ruled that the Indian Tribes owned the territory would he be prepared to accept that result? **REP. DAVIES** stated that he is not concerned with the Indian Tribes. The land that they own is sovereign and this would not affect them at all. Followup by **REP. HARRIS** - We're talking about who owns the land and if the Supreme Court agreed with your premise, that the Enabling Act is unconstitutional, it may well determine that the land reverts to the original owners, are you prepared to accept that result?

REP. DAVIES stated that the original owner of Montana is the Federal Government, prior to the time that the United States obtained statehood. As a sovereign nation, the Indian people own their reservations, they are not owned by the Federal Government. That is fine with us. Followup by **REP. HARRIS** - Given that the sovereign government of United States purchased this land originally in the Louisiana Purchase would you consider it appropriate for the people of Montana to pay the United States just compensation for the land that this bill seeks? **REP. DAVIES** stated that the United States controlled the land when they purchased it but the Constitution does not allow them to own land in the states. When Montana became a state the land should have converted to the state. Followup by **REP. HARRIS** - "It strikes me as curious that the Fifth Amendment is invoked to say that Montana owns the land but there is no recognition that the purchase price needs to be accounted for. Am I missing something?" **REP. DAVIES** stated yes, I think you are, I think that the idea was that the land should revert to the state at the time of statehood. Followup by **REP. HARRIS** - so, not only is the enabling statute of 1889 that created the Dakota's and Montana, but every single other enabling statute creating all of the land, after the thirteen colonies, is unconstitutional, is that your position. **REP. DAVIES** stated yes it is. The constitution specifically spells out how the Federal Government can control land in any of the given states. This has been violated routinely.

REP. CURTISS asked **Casey Emerson** if he is familiar with the group called CIRCA who are using the Fifth Amendment to win some of these cases? They did have one success in the Ninth District Court, could you speak to that? **Mr. Emerson** stated that he does not know about that. **REP. CURTISS** deferred the question to **Mr. Keating** who stated that he is not familiar with the details of the group. **REP. CURTISS** deferred the question to **Mr. Beardslee** who stated that he doesn't know but maybe she is referencing the *Hage* case in Nevada.

REP. BALES asked **Ms. Bucy** if these cases could go directly to the Supreme Court rather than to one of the District Courts. **Ms. Bucy** stated that it is required that the cases go to a District

Court first. The Supreme Court is not going to accept original cert on a case such as this when they have already denied cert on these issues. Cert is accepting the case. Followup by **REP.**

BALES - so under no circumstances could the State of Montana have a case heard direct by the Supreme Court? **Ms. Bucy** stated, "not that I know of."

REP. ERICKSON asked **Mr. Keating** asked what the conclusion of the State of Alaska using his language was. **Mr. Keating** stated that his resolution sited various passages from the U.S. Constitution. That resolution asked the Montana State Legislature to request that Congress consider those arguments and accept that the acts were unconstitutional. Two years after that resolution it was adopted, almost verbatim, by the State of Alaska. Congress never acted on it. It was sited to prove that there are potential allies out there.

REP. MOOD asked **REP. DAVIES** if it is his understanding of the Constitution that the United States had the right to buy the Louisiana Territory from France? **REP. DAVIES** stated that is correct. **REP. MOOD** then asked then under Article 4, Section 3, of the Constitution, they have the right to retain that land? **REP. DAVIES** stated yes. **REP. MOOD** asked, then when Montana became a state the land should have reverted to Montana? **REP. DAVIES** stated yes, that is correct. **REP. MOOD** then asked if there is any federal land inside the State of Texas. **REP. DAVIES** stated that he is not sure. **REP. MOOD** redirected the question to **Mr. Keating** who stated that Texas was a sovereign republic at the time it was invited to become a state and therefore there was no federal land within the boundaries of Texas. The same thing holds true for Oklahoma. **REP. MOOD** followed up asking if Texas did the opposite of what you suggest should have happened with Montana? **Mr. Keating** stated they were a republic before they were asked to be a state. Followup by **REP. MOOD** - "Are you suggesting that if the State of Montana were to own all of the federal land in the state that all that land would then be available for participation in our economy?" **Mr. Keating** stated certainly, it would be operated by the Department of State Lands. **REP. MOOD** then asked if the laws such as the Endangered Species Act would still apply. **Mr. Keating** stated yes because the federal law has been accepted out of congress which is a representative of the state. To the extent that the Endangered Species Act intruded upon private property or state land, they could be challenged under the takings language under the Constitution. Followup by **REP. MOOD** - "Would there be wilderness areas?" **Mr. Keating** stated no. If we wanted to exempt the wilderness areas from our claim then the Federal Parks Department would continue to operate the wilderness. If we wanted to

include the wilderness in our claim then that would be our wilderness not their wilderness. **Mr. Keating** then remarked on the Louisiana Purchase. He also stated that the Federal Government is not sovereign but the states are. Montana should have equal footing with the original states.

REP. BITNEY asked **Mr. Emerson** to clarify some of his concerns of this bill. **Mr. Emerson** read a paragraph from the Declaration of Independence and the Constitution stating, "In all cases affecting ambassadors, other public ministers and councils and those in which a state shall be a party, the Supreme Court shall have original jurisdiction." That's why these cases should go directly to the Supreme Court. That is the constitution.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 35.8}

REP. DAVIES stated that sovereignty can rest at only one level and sovereignty is a relationship between two or more entities. In our country, the concept is that the people are sovereign and then comes the state and the Federal Government is on the bottom. The states got together and mutually agreed to surrender sovereignty in certain areas. These areas are what resulted in the Enumerated Powers in the Constitution. The states did not surrender, in any legal document, any sovereignty in any other areas except those listed. The Executive Branch has entered into the field of making law and that is unconstitutional. George Washington addressed this problem when he said this, "If the Constitution be in any particular wrong let it be changed by amendment, as provided in the constitution, but let there be no change by usurpation. Though in one instance this may be the instrument of good, it is historically the means by which free government are destroyed." The Federal Government was to be given the power to protect the states and that is it. He stated, "Often times when questions of law come up, the people supporting the usurpations hide behind the courts." The courts are supposed to be adhering to the constitution and very often they do not. Regarding **REP. MOOD's** question, the provision in Article I, Section 8, Clause 17, clearly talks about the state in the idea whether the Federal Government could own land. Prior to statehood it was ok for the Federal Government to control these lands. **REP. DAVIES** urged a do pass of HB 253.

ADJOURNMENT

Adjournment: 5:50 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah19aad)